

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

SHAH HOSPITALITY LLC,  
D/B/A GULF AMERICAN INN,

Plaintiff,

v.

CIVIL ACTION NO.:

ATAIN SPECIALTY INSURANCE  
COMPANY, a foreign corporation,

Defendant.

\_\_\_\_\_ /

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Atain Specialty Insurance Company (“Atain”) hereby files its Notice of Removal and shows as follows:

**STATEMENT OF REMOVAL**

1. On March 23, 2023, Shah Hospitality LLC, D/B/A Gulf American Inn (“Plaintiff”) filed a lawsuit against Atain in the Superior Court of DeKalb County, Georgia, Civil Action No. 23CV3242 (the “State Court Action”).

2. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all pleadings filed in the State Court Action are attached hereto and incorporated herein as **Exhibit A**.

3. On March 31, 2023, Plaintiff served Atain with the State Court Action.

4. Atain filed its Answer and Affirmative Defenses in response to the State Court Action on April 21, 2023. A true and correct copy of Atain's Answer and Affirmative Defenses is attached hereto and incorporated herein as **Exhibit B**.

5. Pursuant to 28 U.S.C. § 1441(a), removal of an action originally filed in a state court is proper in “any civil action brought in a state court of which the district courts of the United States have original jurisdiction.”

6. Additionally, 28 U.S.C. § 1332(a) provides that “[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between...citizens of a State and citizens and subjects of a foreign state.”

7. Because this case involves claims for which Plaintiff seeks damages in excess of \$75,000, and is between a citizen of Georgia and a citizen of Michigan, it lies within the original subject matter jurisdiction of this Court pursuant to 28 U.S.C. § 1332(a).

8. In removing this matter to this Court, Atain does not intend to waive any defenses it might have, including, but not limited to, improper service, personal jurisdiction, and venue.

**DIVERSITY OF CITIZENSHIP**

9. Plaintiff Shah Hospitality LLC, D/B/A Gulf American Inn is a Georgia limited liability company with one member/organizer, Jugal Shah. Mr. Shah is domiciled in and is a citizen of Georgia. Therefore, for diversity purposes, Plaintiff is a citizen of Georgia.

10. Atain is a Michigan corporation with its principal place of business in Farmington Hills, Michigan. Atain is a citizen of Michigan.

11. No other parties have been joined or served in this action.

**AMOUNT IN CONTROVERSY**

12. Plaintiff's Complaint alleges breach of contract against Atain seeking to recover under an insurance policy. Specifically, Plaintiff seeks to recover for property damage allegedly caused by a wind and hailstorm occurring on or about March 25, 2021.

13. While Atain denies liability as to Plaintiff's allegations, Plaintiff seeks damages in excess of the jurisdictional limit of \$75,000, as required under 28 U.S.C. § 1332(a). In particular, Paragraph No. 18 of Plaintiff's Complaint references damages in the amount of "\$113,767.40 less previous payments and the applicable deductible." *See* Ex. A, p. 6, ¶ 18. Additionally, Plaintiff also submitted a Sworn Statement Proof of Loss with a total purported loss in the

amount of \$167,834.14, less the Policy's \$2,500.00 deductible. A true and correct copy of Plaintiff's Proof of Loss is attached hereto and incorporated herein as **Exhibit C.**

### **REMOVAL PROCEDURES**

14. Removal of this action is timely under 28 U.S.C. § 1446(b)(3) and Federal Rule of Civil Procedure 6(a) because this Notice of Removal is being filed within thirty (30) days from April 3, 2023, the date Atain first received a document that would permit it to ascertain that the case is one which is or has become removable.

15. Atain is filing this Notice of Removal within 30 days of obtaining notice that the State Court Action became removable, and, therefore, Atain's removal is timely.

16. Removal is properly made to the United States District Court for the Northern District of Georgia under 28 U.S.C. § 1441(a) because DeKalb County, Georgia, where this action is currently pending, is within the Northern District of Georgia, Atlanta Division.

17. Atain will file written notice of the filing of this Notice of Removal with the Clerk of the Court of the Circuit Court for the Superior Court of DeKalb

County, Georgia, and will serve the same on Plaintiff pursuant to 28 U.S.C. § 1446(d).

**WHEREFORE**, by this Notice of Removal, Defendant Atain hereby removes this action from the Superior Court of DeKalb County, Georgia, and respectfully requests that this action proceed as properly removed to this Court.

This 21st day of April 2023.

**WOOD, SMITH, HENNING & BERMAN LLP**  
1230 Peachtree Street, Suite 925  
Atlanta, Georgia 30309  
Telephone: 470-552-1152  
Fax: 470-552-1151  
rzelonka@wshblaw.com  
jrowe@wshblaw.com  
slytle@wshblaw.com

*/s/ P. Jeffery Rowe, Jr.*  
Richard E. Zelonka, Jr.  
Georgia Bar No. 142152  
P. Jeffery Rowe, Jr.  
Georgia Bar No. 125728

*Counsel for Defendant,  
Atain Specialty Insurance Company*

### **CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing ***Notice of Removal*** on all parties, via CM/ECF as follows:

Michael D. Turner, Esq.  
Foster L. Peebles, Esq.  
**THE HUGGINS LAW FIRM, LLC**  
110 Norcross Street  
Roswell, Georgia 30075  
*mdturner@lawhuggins.com*  
*fpeebles@lawhuggins.com*

This 21<sup>st</sup> day of April 2023.

**WOOD, SMITH, HENNING & BERMAN LLP**

1230 Peachtree Street, Suite 925

Atlanta, Georgia 30309

Telephone: 470-552-1152

Fax: 470-552-1151

[rzelonka@wshblaw.com](mailto:rzelonka@wshblaw.com)

[slytle@wshblaw.com](mailto:slytle@wshblaw.com)

/s/ P. Jeffery Rowe, Jr.

Richard E. Zelonka, Jr.

Georgia Bar No. 142152

P. Jeffery Rowe, Jr.

Georgia Bar No. 125728

*Counsel for Defendant,*

*Atain Specialty Insurance Company*